

Tuesday, June 15, 2004

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 11:00 a.m., with Ms. Migden, Chairwoman, Mr. Parrish, Vice Chairman, Mr. Leonard and Mr. Chiang present, Ms. Mandel present on behalf of Mr. Westly in accordance with Government Code section 7.9.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Jeffrey Balkin, 145089

Sylvia Freeman, 260948

1982, \$1,403.00 Assessment

1983, \$93.00 Assessment

For Party One (Jeffrey Balkin):

Jeffrey Balkin, Taxpayer

For Party Two (Sylvia Freeman):

Lee Freeman, Attorney

Sylvia Freeman, Witness

For Franchise Tax Board:

Kathleen Cooke, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether respondent properly granted separate liability innocent spouse relief to Ms. Freeman.

Appellant One's Exhibit: Miscellaneous Documents (Exhibit 6.1)

Appellant Two's Exhibit: Declaration of Sylvia Freeman (Exhibit 6.2)

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Exhibits to these minutes are incorporated by reference.

Robert D. Lange, 240776

2001, \$1,370.00 Assessment

For Appellant:

Robert D. Lange, Taxpayer

For Franchise Tax Board:

Suzanne Small, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellant qualifies for head of household filing status.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Rohr, Inc., 182100

7-31-85, \$1,192,815.00 Assessment

7-31-86, \$1,991,093.00 Assessment

7-31-87, \$1,971,507.00 Assessment

For Appellant:

Mark L. Mann, Attorney

For Franchise Tax Board:

Marguerite Mosnier, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: If appellant Rohr, Inc. (Rohr) and its subsidiary Rohr Credit Corporation (RCC) are found to have been carrying on a unitary business activity during the years in question, did the

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lease losses reported by RCC in those years – primarily incurred in “triple net” sale/leaseback transactions – constitute business income properly apportionable to California in appellant’s combined report or, in the alternative, nonbusiness income subject to allocation under Revenue and Taxation Code section 25124.

Whether or not Rohr and RCC were, in fact, carrying on a unitary business activity during the years in question so as to require them to file a combined report in California.

If RCC’s lease losses during the years in question constitute nonbusiness income, then to what extent, if any, are they allocable to California.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board submitted the appeal for decision.

David F. Paré, 236414

2000, \$1,699.00 Assessment

For Appellant:

David F. Paré, Taxpayer

For Franchise Tax Board:

Kathleen Cooke, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellant qualifies for head of household filing status.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Roger Hui, 218629

1988, \$238.00 Tax, \$171.40 Penalty

1989, \$272.00 Tax, \$181.60 Penalty

For Appellant:

Roger Hui, Taxpayer

For Franchise Tax Board:

Dennis Haase, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the Board has jurisdiction to decide whether the penalties should be abated.

Whether appellant has shown that interest should be abated.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board submitted the appeal for decision.

David A. Dainty, 220025

1985, \$18,877.76 Assessment

For Appellant:

David Dainty, Taxpayer

For Franchise Tax Board:

Dennis Haase, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the Board has jurisdiction to consider appellant’s request for abatement of late filing and late payment penalties and if so, whether appellant has shown reasonable cause for relief of either or both of those penalties.

Whether respondent’s determination not to abate interest, amounts to an abuse of discretion.

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Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Brian M. Sakae, 215268

1998, \$219.00 Assessment

For Appellant:

Brian M. Sakae, Taxpayer

For Franchise Tax Board:

Suzanne Small, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether appellant has met his burden to prove error in the proposed assessment.

Whether a frivolous appeal penalty should be imposed.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 6.3)

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Donald L. Hughes, 236318

1989, \$2,448.76 Assessment

1990, \$1,461.60 Assessment

1991, \$2,443.71 Assessment

For Appellant:

Donald Hughes, Taxpayer

Scott Petter, Representative

For Franchise Tax Board:

Jozel Brunett, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellant has shown that respondent's determination not to abate interest, amounts to an abuse of discretion.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Robert B. and Marjorie R. Whitman, 215139

1999, \$2,114.00 Assessment

For Appellant:

Robert B. Whitman, Taxpayer

For Franchise Tax Board:

Mark McEvilly, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether respondent properly used appellants' non-California source retirement and wages income in the calculation of appellants' California tax liability.

Whether appellants' have shown that respondent abused its discretion in denying their request for interest abatement.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 6.4)

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board submitted the appeal for decision.

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Joy A. Schmidt, 223873

1993, \$8,113.92 Assessment

For Appellant:

Joy A. Schmidt, Taxpayer

For Franchise Tax Board:

Jozel Brunett, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellant has demonstrated that respondent abused its discretion in its determination to only partially abate interest.

Respondent's Exhibit: FTB Tax Forms Request (Exhibit 6.5)

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board submitted the appeal for decision.

John D. and Linda Tulchin, 208984

2000, \$19,560.00 Claim for Refund

For Appellant:

Kimberley M. Reeder, Attorney

For Franchise Tax Board:

Suzanne Small, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellants have shown reasonable cause sufficient to abate the late filing penalty for 2000.

Appellant's Exhibit: Affidavit of John D. Tulchin (Exhibit 6.6)

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Edward A. and Rose L. Ward, 234001, 264456

1999, \$289.62 Claim for Refund

2000, \$1.00 or more Claim for Refund

For Appellant:

Edward A. Ward, Taxpayer

For Franchise Tax Board:

Jeanne Sibert, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether a portion of appellants' retirement income is taxable in California.

Appellant's Exhibit: Letter from PERS (Exhibit 6.7)

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Fox Inc., 171248

6-30-89, \$1,726,405.00 Assessment

For Appellant:

David A. Shuster, Attorney

Ira S. Sheinfeld, Attorney

For Franchise Tax Board:

Jeff Margolis, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether appellant's commercial domicile was located in California during the year at issue.

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Whether the capital gain appellant realized from the disposition of its partnership interest in a nonunitary partnership (the Elle Magazine Joint Venture) constituted nonbusiness income, wholly allocable to appellant's commercial domicile, or business income, subject to apportionment.

In the event that appellant's capital gain is determined to be nonbusiness income wholly allocable to California, is appellant entitled to equitable relief under Revenue and Taxation Code section 25137?

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard and Mr. Chiang voting yes, Ms. Mandel absent, the Board submitted the appeal for decision.

Theophilis J. Batiste, 242063

2000, \$4,483.00 Assessment

For Appellant:

Theophilis J. Batiste, Taxpayer

For Franchise Tax Board:

Jeanne Sibert, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether respondent correctly assessed California tax (including the premature distribution tax) on a retirement account distribution.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 6.8)

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Helen B. Fait, 218628

1994, \$68,685.00 Assessment

For Appellant:

Kathleen P. Dill, Representative

Jon A. Sperring, Representative

James Lee, Witness

For Franchise Tax Board:

Renel A. Sapiandante, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether or not appellant has satisfied her burden of proving entitlement to the claimed \$1.9 million capital loss deduction.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Western Cellulose Inc., 214717

2001, \$752.00 Claim for Refund

For Claimant:

Chris Carbone, Representative

For Franchise Tax Board:

Dennis Haase, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellant has demonstrated reasonable cause for purposes of abating the late filing penalty.

Appellant's Exhibit: Miscellaneous News Articles (Exhibit 6.9)

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Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Glen A. Blair, 242041

1999, \$2,523.00 Tax, \$1,261.50 Penalty

For Appellant:

Glen A. Blair, Taxpayer

For Franchise Tax Board:

Mark McEvilly, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether appellant has shown that respondent incorrectly determined the amount of his income for 1999.

Whether appellant has shown "reasonable cause" for failing to file his 1999 California tax return in a timely manner.

Whether appellant has shown "reasonable cause" for failing to reply to respondent's notice and demand letter.

Whether a frivolous appeal penalty should be imposed against appellant.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 6.10)

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Loran J. Forbes, 216753, 174200

1998, \$1,589.00 Claim for Refund

1998, \$2,226.00 Assessment

For Appellant:

Loran Forbes, Taxpayer

Barton Buhtz, Witness

For Franchise Tax Board:

Jozel Brunett, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether appellant is entitled to a refund of his 1998 withholding.

Whether appellant has demonstrated error in the 1998 assessment.

Whether there is reasonable cause for abatement of the late filing penalty.

Whether the Board should impose a frivolous appeal penalty.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 6.11)

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Lance Crain, 194035

1999, \$781.00 Tax, \$195.25 Late Filing Penalty

For Appellant:

Lance Crain, Taxpayer

For Franchise Tax Board:

Mark McEvilly, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether appellant has demonstrated error in the assessment of tax.

Whether appellant has demonstrated reasonable cause for abatement of the late filing penalty.

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Whether the Board should impose a penalty for filing a frivolous appeal.
Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board submitted the appeal for decision.

SPECIAL TAXES APPEALS HEARING

Edward Azzam Gammoh and Basim Hammad, 188660

9-16-94 to 12-31-99, \$00.00 Fee, \$4,056.70 Failure to Timely Pay Penalty

Edward Azzam Gammoh, 188657

1-1-00 to 12-31-01, \$00.00 Fee, \$4,088.90 Failure to Timely Pay Penalty

For Petitioner: Edward Gammoh, Taxpayer

For Property and Special Taxes Department: Judy Nelson, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the 10 percent late payment penalties assessed should be waived.

Whether petitioners are entitled to relief from the interest assessed by the Department.

Action: Upon motion of Mr. Parrish, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the penalty be deleted, otherwise redetermine as recommended by the Appeals Division.

SALES AND USE TAX APPEALS HEARINGS

HBS Equipment Corporation, 170821

10-1-98 to 12-31-01, \$171,946.32 Tax

For Petitioner: Bert Rosenblum, Taxpayer

Michael E. Mills, Attorney

For Sales and Use Tax Department: Jeffrey Graybill, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioner made a taxable retail sale of a plating system to Gene's Plating Works.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board ordered that the petition be submitted for decision.

Tina Marie DiModica, 210043

1-1-99 to 6-30-01, \$2,019.03 Tax

For Petitioner: Tina Marie DiModica, Taxpayer

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the audited amount of unreported taxable sales is excessive.

Action: Upon motion of Mr. Parrish, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board ordered that the disputed measure of tax be reduced by 10 percent.

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Noevir U.S.A., Inc., 195295

4-1-99 to 3-31-02, \$7,506.77 Tax

For Petitioner:

Hani Wazzan, Representative

Kirby Nakatsuka, Representative

For Sales and Use Tax Department:

Trecia Nienow, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether tax applies to separately stated shipping charges to the extent such charges exceed the actual cost of shipment.

Whether petitioner is entitled to relief from the protested liability based on erroneous advice petitioner received in prior audits.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Donald Joseph Sap (deceased) and Crawford James Brown, 134595

10-1-97 to 11-30-99, \$18,794.53 Tax, \$1,879.45 Negligence Penalty

For Petitioner:

Daniel A. Higson, Attorney

Crawford James Brown, Taxpayer

For Sales and Use Tax Department:

Trecia Nienow, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed for Crawford James Brown. No contribution disclosure forms were filed for Donald Joseph Sap (deceased). The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Issues: Whether petitioners are liable, as partners, for the liability incurred by the limited liability company that operated under their partnership seller's permit.

Whether petitioners have met their burden of establishing that any adjustments to the measure of tax are warranted.

Whether the negligence penalty should be abated.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Francisco J. Zeta, 184862

12-3-98 to 9-30-01, \$17,702.80 Tax, \$1,770.29 Negligence Penalty

For Petitioner:

Francisco Zeta, Taxpayer

For Sales and Use Tax Department:

Sharon Jarvis, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the audit correctly determined petitioner's underreported taxable sales.

Whether the negligence penalty should be deleted.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

The Board recessed at 1:40 p.m. and reconvened at 2:00 p.m. with Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel present.

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TAXPAYERS' BILL OF RIGHTS REIMBURSEMENT CLAIM HEARING

Mark Stanley, 224827

6-9-03, \$13,180.00 Claim for Reimbursement

For Claimant:

George S. Wass, Attorney

Mark R. Stanley, Taxpayer

For Sales and Use Tax Department:

Trecia Nienow, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether claimant is eligible for reimbursement of reasonable fees and expenses related to his hearing before the Board under Revenue and Taxation Code section 7091 and Rules 5090 through 5095 of the Board's Hearing Procedures Guidelines.

Whether the amounts claimed as fees are excessive.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the claim for reimbursement be submitted the for decision.

PUBLIC HEARINGS**Timber Harvest Values**

Mickie Stuckey, Chief, County Property Tax Division, Property and Special Taxes Department, made introductory remarks regarding the Timber Harvest Values. On or before June 30, 2004, the Board will estimate the immediate harvest value and adopt schedules for each species or sub-classification of timber harvested between July 1 and December 31, 2004 (Revenue and Taxation Code section 38204(a)) (Exhibit 6.12).

Speakers: Roy H. Richards, Jr., Member, Timber Advisory Committee

Action: Upon motion of Mr. Leonard, seconded by Ms. Migden and duly carried, Ms. Migden, Mr. Parrish, Mr. Leonard and Mr. Chiang voting yes, Ms. Mandel voting no, the Board reduced the Timber Harvest Values in Table G, Timber Value Area 6, Ponderosa Pine, Size Code 3 from 280 to 270, and Size Code 2 from 360 to 350, and adopted the remaining values in Table G of the Timber Harvest Schedule as recommended by staff.

Ms. Migden requested that staff look towards the efficacy of the methodology and approach of sharing information with the Timber Advisory Committee with respect to the confidentiality of sales data.

LEGAL APPEALS MATTERS, CONSENT

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Ms. Migden, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board made the following orders:

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Sodini Enterprises, Inc., 164578

7-1-98 to 6-30-01, \$18,418.59 Tax

Action: Deny the petition for rehearing as recommended by the Appeals Division.

Sherman Oaks Catch 21, Inc., 89000098330

11-1-91 to 6-30-96, \$124,350.88 Tax, \$31,087.74 Fraud Penalty

Valencia Catch 21, Inc., 89002240940

9-1-92 to 6-30-96, \$114,047.08 Tax, \$28,511.85 Fraud and \$126.20 Failure to File Penalties

Burbank Catch 21, Inc., 89002302500

12-1-93 to 6-30-96, \$ Tax, \$16,003.65 Fraud and \$1,868.71 Failure to File Penalties

Action: Redetermine as recommended by the Appeals Division.

Comtel Electronics, Inc., 186476, 186479

4-1-99 to 3-31-00, \$00.00 Tax

7-1-98 to 3-31-99, \$266,372.31 Tax

Action: Redetermine as recommended by the Appeals Division.

Pace LLC, 141496, 174678

8-29-00, \$1,395,000.00 Tax, \$139,500.00 Failure to File Penalty

4-3-01, \$441,600.00 Tax, \$44,160.00 Failure to File Penalty

Action: Redetermine as recommended by the Appeals Division.

Kwanta Chuenmeesri, 197122

1-1-99 to 12-31-01, \$25,900.22 Tax, \$2,612.08 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Katherine Louise Silvera, 206434, 220112

1-1-99 to 12-31-01, \$8,544.29 Tax

1-1-99 to 12-31-01, \$8,544.29 Claim for Refund

Action: Redetermine as recommended by the Appeals Division.

IBA Computers, Inc., 181500

7-1-97 to 12-31-97, \$23,020.07 Tax, \$5,755.04 Fraud Penalty

Feroz R. Jadhavji and Naseem J. Panjwani, 181560

7-1-94 to 6-30-97, \$342,569.78 Tax, \$85,642.50 Fraud Penalty

Action: Redetermine as recommended by the Appeals Division.

Heitman Brooks, LLC, 105599

10-1-96 to 9-30-99, \$115,220.18 Tax

Action: Redetermine as recommended by the Appeals Division.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

The Board deferred consideration of the following matters: *Steve E. and Frances T. Berman, 224325; Jacqueline J. Ha, 240647; and Gary M. Levin, 219879.*

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With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Ms. Mandel, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board made the following orders:

Dale P. and Marilyn J. Barcellos, 220028

1998, \$746.00 Tax, \$149.20 Penalty

Action: Sustain the action of the Franchise Tax Board.

Frank Beer, 224292

2000, \$601.43 Claim for Refund

Action: Sustain the action with concession by the Franchise Tax Board.

Steve E. and Frances T. Berman, 224325

2001, \$3,414.75 Claim for Refund

Action: The Board deferred consideration of this matter.

Joseph A. Boystak, 238345

1999, \$28,253.36 Assessment

Action: Sustain the action of the Franchise Tax Board.

Peter A. and Patricia Canon, 224470

1998, \$72.73 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Dawn M. Carey, 236982

2001, \$468.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Charles F. Eberle, 218231

1999, \$5,267.00 Tax, \$1,316.00 Late Filing and \$1,316.00 Notice and Demand Penalties

Action: Sustain the action of the Franchise Tax Board and impose a \$5,000.00 frivolous appeal penalty.

Jacqueline J. Ha, 240647

1999, \$3,044.32 Claim for Refund

Action: The Board deferred consideration of this matter.

Lawrence R. and Mary S. Hicks, 239603

1991, \$4,473.94 Claim for Refund

Action: Sustain the action with concession by the Franchise Tax Board.

Tommy Q. Hill, 235803

1998, \$707.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

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Clarence J. Irving, 220297

1986, \$7,512.48 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Mariam Karapetian, 220390

1996, \$10,414.56 Claim for Refund

1997, \$10,137.88 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Elizabeth A. Kinsey, 222839

1997, \$3,919.25 Claim for Refund

1999, \$2,689.25 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Gary M. Levin, 219879

1996, \$5,743.74 Claim for Refund

Action: The Board deferred consideration of this matter.

Larry A. Morales, 239071

2001, \$1,052.00 Tax, \$263.00 Failure to Furnish Information Penalty

Action: Sustain the action of the Franchise Tax Board.

Kirk C. Odegaard, 224339

2000, \$5,201.00 Tax, \$1,300.25 Late Filing and \$1,300.25 Notice and Demand Penalties

Action: Sustain the action of the Franchise Tax Board and impose a \$1,000.00 frivolous appeal penalty.

Dennis P. Rossi, 238634

1999, \$1,580.02 Assessment

Action: Sustain the action of the Franchise Tax Board.

Philip J. Sciortino, 237019

1999, \$138.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Kathleen Semones, 217851

1996, \$494.22 Tax

Action: Sustain the modified action with concession by the Franchise Tax Board.

Wendell and Gerry Simmons, 241900

1999, \$902.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Rick V. Stevenson, 206111

1999, \$206.00 Tax, \$100.00 Late Filing and \$51.50 Notice and Demand Penalties

Action: Sustain the action of the Franchise Tax Board and impose a \$1,000.00 frivolous appeal penalty.

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John C. Templer, Sr., 245882

1983, \$2,140.47 Assessment

Action: Sustain the action of the Franchise Tax Board.

Robert and Mary Thiel, 234014

1997, \$152.00 Claim for Refund

1998, \$868.33 Claim for Refund

1999, \$1,457.44 Claim for Refund

2000, \$428.00 Claim for Refund

Action: Sustain the action with concession by the Franchise Tax Board.

Sondra B. and David Wain, 241966

1997, \$73,721.00 Assessment

1998, \$27,325.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Scott and Dawn M. Zenor, 245911

1999, \$1,986.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Square D Company, 162822

1985, \$163,836.00 Assessment

1986, \$390,754.00 Assessment

1987, \$443,624.00 Assessment

1988, \$230,024.00 Assessment

1989, \$237,011.00 Assessment

1990, \$611,426.00 Assessment

Circuit Foil USA, Inc

1987, \$56,934.00 Assessment

1988, \$233,278.00 Assessment

1990, \$22,170.00 Assessment

Action: Deny the petition for rehearing.

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT

With respect to the Homeowner and Renter Property Tax Assistance Matters Consent Agenda, upon a single motion of Mr. Chiang, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board made the following orders:

Phoenix P. Aguila, 239764

2003, \$347.50 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Antonia Alvarez, 241714

2003, \$308.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

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Dolores Alvarez, 241605

2003, \$347.50 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Emma Avakemian, 245454

2003, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Vitaly Ayzenberg, 244827

2003, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

P. H. Bacon, 241727

2003, \$347.50 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Acqunetta D. Barnett, 241613

2003, \$400.00 Claim for Credit

Action: Sustain the modified action with concession by the Franchise Tax Board.

Monique Denise Bell, 246144

2003, \$347.50 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

J. P. Broussard, III, 241737

2003, \$347.50 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Lionel D. Brown, 218211

2002, \$760.00 Claim for Credit

Action: Reverse the action of the Franchise Tax Board.

Mary Dominguez, 221171

2000, \$350.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Margaret Fisher, 251056

2003, \$347.50 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Frank Ginorio, 245059

2003, \$347.50 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

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Mary Hagen, 244986

2003, \$347.50 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Thomas Jackson, 244131

2003, \$347.50 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

George W. Jordan, 244433

2003, \$347.50 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Chung Kim, 245022

2003, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Gertrude Koenig, 244277

2003, \$112.50 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Lee A. Lamb, 246017

2003, \$347.50 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Dennis E. Lowe, 244154

2003, \$327.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Margaret Malarowitz, 244337

2003, \$347.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Joseph A. McCowan, 242307

2003, \$340.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Melvin L. McGowan, 242275

2003, \$347.50 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Lena Papillon, 241657

2003, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

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SALES AND USE TAX MATTERS, REDETERMINATIONS AND RELIEF OF PENALTIES, CONSENT

With respect to the Sales and Use Tax Matters, Redeterminations and Relief of Penalties, Consent Agenda, upon a single motion of Mr. Chiang, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board made the following orders:

Safety-Kleen Corporation, 89000810340

7-1-94 to 9-30-97, \$165,942.31

Action: Approve the redetermination as recommended by staff.

Micron Semiconductor Products, Inc., 170188

1-1-99 to 6-30-99, \$1,718,104.83

Action: Approve the redetermination as recommended by staff.

Regus Business Centre Corporation, 225010

1-1-99 to 3-31-02, \$64,853.86

Action: Approve the redetermination as recommended by staff.

Lunaire Limited, Inc., 213736

7-1-98 to 12-31-01, \$75,987.27

Action: Approve the redetermination as recommended by staff.

W.I. Simonson, Inc., 253142

7-1-03 to 9-30-03, \$54,263.30

Action: Approve the relief of penalty as recommended by staff.

SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Mr. Chiang, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 87105 in *Pacific Telesis Group, 244598*; *Cisco Systems, Inc., 256317*; and *RPM Acquisition Corporation, 241102*; the Board made the following orders:

E.W. Bliss Company, 260806

1-1-94 to 10-18-96, \$177,387.75

Action: Approve the credit and cancellation as recommended by staff.

Pacific Telesis Group, 244598

7-1-99 to 6-30-02, \$293,044.49

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

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Cisco Systems, Inc., 256317

1-1-97 to 3-31-00, \$443,505.11

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

Puma North America, Inc., 220266

4-1-01 to 12-31-02, \$102,341.55

Action: Approve the refund as recommended by staff.

Merritt Equipment, LLC, 258871

7-1-00 to 6-30-03, \$258,173.00

Action: Approve the refund as recommended by staff.

Valley Credit Union, 220288

10-1-02 to 3-31-03, \$55,772.02

Action: Approve the refund as recommended by staff.

RPM Acquisition Corporation, 241102

1-1-99 to 1-28-99, \$289,719.30

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

Pacific Investment Management Company, LLC, 236115

1-1-99 to 9-30-02, \$273,580.43

Action: Approve the refund as recommended by staff.

SPECIAL TAXES MATTERS, REFUNDS, CONSENT

With respect to the Special Taxes Matters, Refunds, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9 in *Sunset Life Insurance Company of America*, 259368, the Board made the following orders:

Smart & Final Stores Corporation, 251446

12-1-03 to 12-31-03, \$540,021.94

Action: Approve the refund as recommended by staff.

R.J. Reynolds Tobacco Company, 237150

1-1-03 to 3-31-03, \$73,850.56

Action: Approve the refund as recommended by staff.

Sunset Life Insurance Company of America, 259368

1-1-02 to 12-31-02, \$75,410.41

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

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**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES
HEARINGS HELD JUNE 15, 2004**

Jeffrey Balkin, 145089

Sylvia Freeman, 260948

Final Action: Upon motion of Ms. Migden, seconded by Mr. Parrish and duly carried, Ms. Migden, Mr. Parrish, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang voting no, the Board sustained the action of the Franchise Tax Board.

Robert D. Lange, 240776

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

Rohr, Inc., 182100

Final Action: Ms. Migden moved to sustain the action of the Franchise Tax Board. The motion was seconded by Ms. Mandel. Mr. Leonard made a substitute motion as to Issue 1, that the income from the leases is nonbusiness; Issue 2, that the business is unitary; and, Issue 3, that the income is on a California source. The motion was seconded by Mr. Parrish but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Ms. Migden, Mr. Chiang and Ms. Mandel voting no.

Upon motion of Ms. Migden, seconded by Ms. Mandel and duly carried, Ms. Migden, Mr. Chiang and Ms. Mandel voting yes, Mr. Leonard voting no, Mr. Parrish abstaining, the Board sustained the action of the Franchise Tax Board.

David F. Paré, 236414

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

Roger Hui, 218629

Final Action: Upon motion of Ms. Migden, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

Rodney Johnson, 235562

1999, \$1.00 or more Assessment

For Appellant:

No Appearance

For Franchise Tax Board:

Kathleen Cooke, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Issues: Whether or not appellant has established that the interest accrued on the assessment of additional taxes against him is attributable in whole or in part to any unreasonable

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error or delay by an officer or employee of respondent in performing a ministerial or managerial act.

Action: Upon motion of Ms. Migden, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES
HEARINGS HELD JUNE 15, 2004**

David A. Dainty, 220025

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

Brian M. Sakae, 215268

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board and impose a \$1,000.00 frivolous appeal penalty.

Donald L. Hughes, 236318

Final Action: Mr. Leonard moved to abate the interest, otherwise sustain the action of the Franchise Tax Board. The motion was seconded Mr. Parrish but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Ms. Migden, Mr. Chiang and Ms. Mandel voting no.

Upon motion of Ms. Mandel, seconded by Ms. Migden and duly carried, Ms. Migden, Mr. Chiang and Ms. Mandel voting yes, Mr. Leonard voting no, Mr. Parrish abstaining, the Board sustained the action of the Franchise Tax Board.

Robert B. and Marjorie R. Whitman, 215139

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

Joy A. Schmidt, 223873

Final Action: Upon motion of Ms. Migden, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

John D. and Linda Tulchin, 208984

Final Action: Ms. Mandel moved to sustain the action of the Franchise Tax Board. The motion was seconded by Ms. Migden. Mr. Parrish made a substitute motion to reverse the action of the Franchise Tax Board. The substitute motion was seconded by Mr. Leonard but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Ms. Migden, Mr. Chiang and Ms. Mandel voting no.

Upon motion of Ms. Mandel, seconded by Ms. Migden and duly carried, Ms. Migden, Mr. Chiang and Ms. Mandel voting yes, Mr. Parrish and Mr. Leonard voting no, the Board sustained the action of the Franchise Tax Board.

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Edward A. and Rose L. Ward, 234001, 264456

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

Fox Inc., 171248

Final Action: Upon motion of Ms. Migden, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish and Mr. Leonard voting yes, Mr. Chiang and Ms. Mandel not participating, the Board sustained the action of the Franchise Tax Board.

Theophilis J. Batiste, 242063

Final Action: Upon motion of Ms. Migden, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

Helen B. Fait, 218628

Final Action: Upon motion of Mr. Parrish, seconded by Mr. Leonard and duly carried, Mr. Parrish, Mr. Leonard and Mr. Chiang voting yes, Ms. Migden and Ms. Mandel voting no, the Board reversed the action of the Franchise Tax Board.

Western Cellulose Inc., 214717

Final Action: Upon motion of Ms. Migden, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

Glen A. Blair, 242041

Final Action: Upon motion of Ms. Migden, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board and imposed a \$2,500.00 frivolous appeal penalty.

Loran J. Forbes, 216753, 174200

Final Action: Upon motion of Ms. Migden, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board and imposed a \$1,000.00 frivolous appeal penalty.

Lance Crain, 194035

Final Action: Upon motion of Ms. Migden, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board and imposed a \$1,000.00 frivolous appeal penalty.

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**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD
JUNE 15, 2004**

HBS Equipment Corporation, 170821

Final Action: Upon motion of Ms. Mandel, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang not participating, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Noevir U.S.A., Inc., 195295

Final Action: Upon motion of Ms. Migden, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Donald Joseph Sap (deceased) and Crawford James Brown, 134595

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Francisco J. Zeta, 184862

Final Action: Upon motion of Ms. Migden, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

**FINAL ACTION ON TAXPAYERS' BILL OF RIGHTS REIMBURSEMENT CLAIM
HEARING HELD JUNE 15, 2004**

Mark Stanley, 224827

Final Action: Upon motion of Ms. Migden, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the claim for reimbursement be denied.

The Board adjourned at 2:40 p.m.

The foregoing minutes are adopted by the Board on August 24, 2004.

Note: The following cases were removed from the calendar prior to the meeting: *Louis Tamale*, 219530; *Crossroads Truck Dismantlers, Inc.*, 193778; *Mold Machine Company, Inc.*, 182123; and, *Stanley Gene Lorentzen*, 89000966070, 89000966080.

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